

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: GENERATION PLANT SITING	DOCKET NO. RMU-01-7
---------------------------------------	---------------------

ORDER COMMENCING RULE MAKING

(Issued August 3, 2001)

Pursuant to the authority of Iowa Code §§ 17A.4, 476.1, and Iowa Code chapter 476A (2001), the Utilities Board proposes to adopt the rules attached hereto and incorporated by reference. These rules amend 199 IAC chapter 24 to reflect recent changes to the chapter enacted in House File 577. The reasons for proposing these amendments are set forth in the attached notice of intended action.

IT IS THEREFORE ORDERED:

1. A rule making proceeding, identified as Docket No. RMU-01-7, is commenced for purposes of receiving comments upon the proposed rules attached to this order.

2. The Acting Executive Secretary is directed to submit for publication in the Iowa Administrative Bulletin a notice in the form attached to and incorporated by reference in this order.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper _____
Acting Executive Secretary

Dated at Des Moines, Iowa, this 3rd day of August, 2001.

UTILITIES DIVISION [199]

Notice of Intended Action

Pursuant to Iowa Code sections 17A.4, 476.1, and chapter 476A (2001), the Utilities Board (Board) gives notice that on August 3, 2001, the Board issued an order in Docket No. RMU-01-7, In re: Generation Plant Siting. The Board is proposing extensive amendments to current 199 IAC chapter 24 to make them consistent with changes to Iowa Code chapter 476A enacted this legislative session in House File 577. House File 577, among other things, made significant changes to the plant siting statute.

House File 577 removed some of the decision criterion from Iowa Code chapter 476A. These are: 1) existence of a comprehensive energy plan including load management, energy efficiency, and renewables, 2) consideration of purchased power, and 3) consideration of all feasible alternatives to the proposed facility including nongeneration alternatives.

The decision criterion are now: 1) willingness to construct, maintain, and operate the facility pursuant to the provisions of the certificate, and 2) consistency with reasonable land use and environmental policies and consonant with reasonable use of air, land, and water resources. The third criterion, determination of public convenience, use, and necessity was changed to the determination of consistency with the state's energy and economic development policies and of no harm to service adequacy and reliability.

The major proposed rule revisions are discussed below. Rule references are to the rules as they are currently numbered for easier reference.

199 IAC 24.1(3) Policy: This subrule is renamed as "cooperative agreements." Subparagraph 24.1(3)"a"(1) is deleted as unnecessary because it discusses the Board policy that public development of information regarding the proposed facility is necessary to determine the future impacts of the facility. Subparagraph 24.1(3)"a"(2) is also deleted as unnecessary because it discusses that the plant siting proceedings be held in an expeditious and most economical manner while protecting the public interest. Subparagraph 24.1(3)"a"(3) is the only paragraph that is retained because it discusses a consolidated hearing process where the Board enters into cooperative agreements with other agencies as contemplated in subsection 476A.13(1). The remaining sections that discuss applicant's responsibilities are deleted as unnecessary under the new legislation.

199 IAC 24.2 Definitions: This subrule is revised to delete areas that mention certificate of public convenience, use, and necessity, which is no longer a decision criteria in a siting proceeding. Also, definitions on data requirements such as load curves are deleted. A definition of "public utility" that refers to Iowa Code section 476A.1 has been added.

199 IAC 24.3(2): This section has been revised to update the list of regulatory agencies that receive notice of the plant siting process because of their potential interest in the proceedings.

199 IAC 24.4 Contents of application: This rule has significant revisions.

In the “general information” section, language is added which asks for some basic and readily available information about the applicant, specifically information about its parent company and affiliates. A recent application for a merchant plant created confusion because a new corporation was formed for purposes of filing the application but the corporation's parent was not identified. This change would eliminate the confusion.

Language has been added to require information about how the plant will be used. New language is proposed that would allow the Board to determine whether the facility will be detrimental to the existing transmission network that was built for the primary benefit of Iowa consumers. House File 577 requires that the facility not be detrimental to the provision of adequate and reliable service. The added language will assist the Board in making this determination.

Because the Board is no longer required to determine the need for the facility, sections that required “current system information” and “future system information” are deleted. In addition, the Board is no longer required to look at the most economically feasible alternative. Therefore, the proposed rules delete the section requiring information on “economic evaluation and feasibility.”

The “community impact” portion of the current rules is retained because the decision criteria require the Board to determine whether the facility will be consistent with reasonable land use and environmental policies and consonant with reasonable utilization of air, land, and water resources considering available technology and the economics of available alternatives.

The “site selection methodology” section is revised to keep information on the general criteria used to select the site and eminent domain requirements when selecting a site.

199 IAC 24.8 Prehearing conferences: This rule has been deleted because the Board's general procedural rules, 199 IAC chapter 7, provide for prehearing conferences.

199 IAC 24.9(1): This subrule has been revised to include the provision (as required by House File 577) that the proceeding for the certificate may be consolidated with the contested case proceeding for determination of ratemaking principles under the new Iowa Code section 476.53.

199 IAC 24.9 (6): This subrule has been deleted as unnecessary. The Board's rules in 199 IAC chapter 1 provide that any member of the public may request copies of documents filed with the Board.

199 IAC 24.10(4): This subrule is proposed to be deleted as duplicative.

199 IAC 24.11 (2) Facility siting criteria: Proposed revisions to this subrule reflect the new decision criteria enacted by the General Assembly.

199 IAC 24.13(3) Certificate transfer: This proposed subrule is new. The section reflects current law, which allows transfer of certificates.

199 IAC 24.13(4) Application withdrawal: New language is added, consistent with House File 577, that allows for withdrawal of the application.

199 IAC 24.14(4): This proposed subrule is revised to remove the 100 MW limit on certificate exemptions and any amendments to the certificate. The 100 MW limit has been deleted in House File 577.

199 IAC 24.16 Waiver: This rule has been revised to delete the 100 MW limit on waiver requests. Language requiring information on need is deleted as unnecessary because need is no longer a decision criteria.

Pursuant to Iowa Code sections 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before September 11, 2001, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author's name and address and should make specific reference to this docket. All communications should be directed to the Acting Executive Secretary, Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

A public hearing to receive comments on the proposed amendments will be held at 10 a.m. on October 3, 2001, in the Board's hearing room at the address listed above. The Board does not find it necessary to propose a separate waiver provision in this rule making. The Board's general waiver provision in 199 IAC 1.3 is applicable to these rules.

These amendments are intended to implement Iowa Code section 476.1 and chapter 476A.

The following amendments are proposed.

Item 1. Amend **24.1(2)** as follows:

24.1(2) Purpose. The purpose of these regulations is to provide guidelines for proceedings for the determination, after consolidated hearing, whether the proposed construction of a major electric generation facility or significant

alteration thereto should be issued a certificate ~~of public convenience, use, and necessity required~~ before such construction may commence and to state the procedures for determining compliance by the applicant with permit and licensing requirements of state regulatory agencies.

Item 2: Amend **24.1(3)** as follows:

24.1(3) ~~Policy.~~ Cooperative agreements.

~~a. These regulations reflect the following policies of the board:~~

~~(1) That a just and reasonable determination of whether the proposed construction is to be certificated requires a thorough, public development of information describing the present and future impacts a facility's construction and use would have on the public and the state.~~

~~(2) That the proceedings to certificate major electric power plants and significant alterations to such plants should be conducted in a manner which is as expeditious and economical as possible without compromising the board's fundamental obligation of protecting the public interest.~~

~~(3) That a consolidated hearing process in which t~~The board, utilizing Iowa Code chapter 28E, may enters into cooperative agreements pursuant to Iowa Code chapter 28E with the appropriate state agencies that will facilitate ~~through~~ thorough review of all state issues arising in the certification process and will reduce the time and expense in determining, to the extent necessary, the environmental, economic, and social effects of the facility's construction and use. Under the auspices of these 28E agreements, the board shall delegate to the various state agencies responsibility for the issuance of permits and licenses

appropriate to the authority of the agency in assuring compliance with the steps in the certification process.

~~(4) That each party to a certification proceeding should guide its conduct in the proceeding by these considerations.~~

~~b. Each applicant for facility certification shall accept primary responsibility for qualitative and quantitative information it provides in support of its application. In further recognition of its responsibilities, each application shall disclose any and all information known to the applicant which would reasonably be expected to affect the board's certification decision.~~

~~c. Each party to the certification proceeding shall make every effort to avoid unnecessary delay in the proceeding to the end that a determination as to the issuance of a certificate will be timely made, thereby minimizing both the cost of the construction of a facility, and the cost of the electric energy generated at such facility.~~

Item 3: Amend **24.2** as follows:

199—24.2(476A) Definitions. As used in this chapter:

“Acid Rain Program” means the sulfur dioxide and nitrogen oxides air pollution control program established pursuant to Title IV of the Clean Air Act, 42 U.S.C. Section 7401, et seq., as amended by Pub. L. 101-549, November 15, 1990.

“Act” means Iowa Code chapter 476A entitled Electric Power Generators.

“Agency” means an agency as defined in Iowa Code section 17A.2(1).

“Allowance” means an authorization, allocated by the federal Environmental Protection Agency under the Acid Rain Program, to emit up to one ton of sulfur dioxide, during or after a specified calendar year. *“Applicant”* means the person or persons who make an application for a certificate for a facility or an amendment to a certificate for a facility under the Act. For projects with more than one participant, the applicant may be that person designated by and acting on behalf of the participants.

“Application” means an application for a certificate or an amendment to a certificate submitted to the board pursuant to the Act.

“Board” means the utilities board.

“Certificate” means a certificate ~~of public convenience, use and necessity issued by the board under the Act, as defined in Iowa code section 476A.1.~~

“Contested case proceeding” means the contested case proceeding before the board prescribed by section 4 of the Act.

~~*“Duration curve”* means a graphical representation of kilowatts plotted in descending order of magnitude against time intervals for a specified period.~~

“Facility” means any electric power generating plant or combination of plants at a single site, owned by any person, with a maximum generator nameplate capacity of 25 megawatts of electricity or more and those associated transmission lines connecting the generating plant to either a power transmission system or an interconnected primary transmission system or both. This term includes any generation addition that increases the total maximum generator

nameplate capacity at one site to 25 megawatts or more, but does not include those transmission lines beyond the generation station's substation.

~~"Integrated energy curve" means a graphical representation of kilowatts as a function of kilowatt hours showing the amount of energy represented under a duration curve, above any point of demand.~~

"Interested agency" means an agency, other than a regulatory agency, which the board in its discretion determines to have a legitimate interest in the disposition of the application.

"Intervenor" means a person who received notice under 24.6(2) "b," "c," "d," "e," or "f" and has filed with the board a written notice of intervention, or, in all other cases, who, upon written petition of intervention is permitted in the proceeding pursuant to 199—subrule 7.2(8).

~~"Largest industrial users" means the largest industrial customers, whose collective kilowatt hour consumption comprises one-half of total large commercial and industrial sales or whose demand is 2000 kilowatts or larger.~~

~~"Load curve" means a graphical representation of kilowatts versus time of occurrence showing in chronological sequence the magnitude of the load for each unit of time of the period covered.~~

"Participant" means any person who either jointly or severally owns or operates a proposed facility or significant alteration thereto or who has contracted or intends to contract for a purchase of electricity produced by the subject facility.

“Party” means each person or agency named or admitted as a party, including the applicant, intervenors, and consumer advocate.

“Person” means individual, corporation, cooperative, government or governmental subdivision or agency, partnership, association or other legal entity.

“Public utility” means a public utility as defined in Iowa Code section 476.1.

“Regulatory agency” means a state agency which issues licenses or permits required for the construction, operation or maintenance of a facility pursuant to statutes or rules in effect on the date on which an application for a certificate is accepted by the board.

“Significant alteration” means:

a. A change in the generic type of fuel used by the major electric generating facility; or

b. Any change in the location, construction, maintenance, or operation of equipment at an existing facility that results in a 10 percent increase or more in the maximum generator nameplate capacity of an existing facility if the increase is more than or equal to 25 megawatts.

“Site” means the land on which the generating unit of the facility, and any cooling facilities, cooling water reservoirs, security exclusion areas, and other necessary components of the facility, are proposed to be located.

“Site impact area” means the area within the state of Iowa within a ten-mile radius of the intersection of the transverse centerline axis and longitudinal

centerline axis of the generator, or, all such generators where the proposed facility includes multiple generators.

“Zoning authority” means any city or county zoning authority in whose jurisdictional area a proposed facility site or portion thereof is located.

Item 4: Amend **24.3(2)"c" and "d"** as follows:

c. Within ten days of the receipt of application, the board shall forward copies thereof to each regulatory agency listed in the application. In addition, that part of the application responding to 24.4(1)“a” through “c” will be forwarded to such other agencies as the board deems appropriate, including the office of state archaeologist, ~~the Iowa geological survey,~~ the division of community action agencies of the department of human rights, and the office of historical preservation of the state historical society of Iowa as interested agencies, and also to ~~the natural resource commission of the department of natural resources,~~ the Iowa department of transportation, and the environmental protection division of the department of natural resources, if such have not been designated as regulatory agencies.

d. Any amendments to the application shall be filed in a manner similar to that required of the application. ~~All information subsequently transmitted for purposes of inclusion in the application shall be by the issuance of appropriate amendments to the application which shall be in the form of page-for-page additions or substitutions properly identified as such.~~

Item 5: Amend **24.4** as follows:

199—24.4(476A) Application for a certificate—contents. Each person or group of persons proposing to construct a facility after January 1, 1977, or a significant alteration to a facility shall file an application for certificate ~~of public convenience, use, and necessity~~ with the board, unless otherwise provided by these rules. ~~Any such person may file its application in stages.~~ The applicant may file a portion of an application and, in conjunction therewith, a request that the board accept such portion of the application pursuant to subrule 24.5(3) and conduct a separate phase of the proceeding with respect to issues presented by such portion of the application to the extent permitted pursuant to 24.5(3) and 24.10(476A). ~~The purpose of this rule is to elicit the development and presentation of information sufficient to adequately facilitate comprehensive evaluation of a proposed facility's feasibility. Nothing in this rule shall be construed to limit or in any way restrict the amount or type of information relevant to the issues in a plant-siting adjudication. Any omission or deficiency in the filed information, which is known to the applicant, shall be clearly identified by the applicant with an explanation for the noted omission or deficiency. Applicant shall indicate whether the information omitted will be supplied at a later date and, if not, shall indicate the rationale for the omission.~~ An application shall substantially comply with the following informational requirements:

Item 6: Amend **24.4(1)** as follows:

24.4(1) In section 1, entitled, "General Information," applicant shall include the following information:

a. ~~The legal name~~ Name, address, telephone number, fascimile transmission number, and e-mail address of the applicant and all other participants of the proposed facility at the time of filing, as well as the name of the person authorized to receive communications relating to the application on behalf of those persons, Iowa business address, if applicable, and principal place of business of the applicant.

b. The name and type of business of the applicant's and all other participants' parent companies and affiliates along with percentages of ownership.

~~c~~b. A complete description of the current and proposed rights of ownership in the proposed facility and current or planned purchase power contracts with respect to the proposed facility.

~~d~~e. A general site description including a legal description of the site location, a map showing the coordinates of the site and its location with respect to state, county, and other political subdivisions, and prominent features such as cities, lakes, rivers and parks within the site impact area. Applicant shall also provide a more detailed map showing the location of the facility perimeter, utility property, railroads and other transportation facilities, abutting and adjacent properties, cities, lakes, rivers, parks, other public facilities, cemeteries and places of historical significance within one mile of the site boundary.

~~e~~f. A general description of the proposed facility including a description of the principal characteristics of the facility such as ~~major components and such information as will generally acquaint the board with the significant features of the~~

~~facility, including~~ the capacity of the proposed facility in megawatts expressed by the contracted maximum generator nameplate MW rating, the net facility addition to the system in MW, by net to the busbar rating, and the portion (in MW) of the design capacity of the proposed facility which is proposed to be available for use by to serve each participant's ~~service area~~, the number and type of generating units ~~and the type of fuel used by each~~, primary fuel source for each such unit, ~~the heat rate of each generating unit in Btu/kilowatt hour over the range of its operating capacity, the function of each generating unit in applicant's generating system,~~ total hours of operation anticipated seasonally, and annually and output during these hours, expected capacity factors, a description of the general arrangement of major structures and equipment to provide the board with an understanding of the general layout of the facility, and a schedule for the facility's construction and utilization including the projected date significant site alteration is proposed to begin and the projected date the facility is to be placed into service. For this purpose, a group of several similar generating units operated together at the same location such that segregated records of energy output are not available shall be considered as a single unit.

fe. A general description of all raw materials, including fuel, used by the proposed facility in producing electricity and of all wastes created in the production process. In addition to describing the wastes created in the production process, the applicant shall determine annual expected sulfur dioxide emissions from the facility and provide a plan for acquiring allowances sufficient to offset these emissions. The applicant shall describe all transportation facilities

currently operating that will be available to serve the proposed facility and shall describe any additional transportation facilities needed to deliver raw materials and to remove wastes.

gf. Identification, general description and chronology of all financial and other contractual commitments undertaken or planned to be undertaken with respect to the proposed facility.

gh. A general map and description of the primary transmission corridors and the approximate routing of the rights-of-way in the vicinity of settled areas, parks, recreational areas, and scenic areas. An analysis of the existing transmission network's capability to reliably support the proposed additional generation interconnection to the network. The analysis must also show that the interconnection to the transmission system is consistent with standard utility practices and the proposed interconnection does not degrade the adequacy, reliability, or operating flexibility of the existing transmission system in the area.

ih. The applicant, if a public utility, must include a statement of total cost to construct the proposed facility. Such cost shall include, but shall not be limited to, the cost of all electric power generating units, all electric supply lines within the facility site boundary, all electric supply lines beyond the facility site boundary with voltage of 69 kilovolts or higher used for transmitting power from the facility to the point of junction with the distribution system or with the interconnected primary transmission system, all appurtenant or miscellaneous structures used and useful in connection with said facility or any part thereof, and all rights-of-

way, lands or interest in lands the use and occupancy of which are necessary or appropriate in the maintenance or operation of said facility.

ki. The names and addresses of those owners and lessees of record or real property identified in 24.6(2)“d” and “e.”

Item 7: Amend **24.4(2)** as follows:

24.4(2) In section 2, entitled, “Regulatory Requirements,” applicant shall include the following:

a. All information related to the regulatory agency and zoning authority requirements for permits or licenses necessary to construct, operate, and maintain the facility. ~~Any deficiencies in this information shall be clearly identified, and a schedule for submitting the omitted information shall be presented.~~

b. A listing of every state agency from which any approval or authorization concerning the proposed facility is required and a listing of zoning authorities.

~~c. Information equivalent to the information required in the rules and application forms of such state regulatory agencies and zoning authorities.~~

Item 8: Delete subrules **24.4(3)**, **24.4(4)**, and **24.4(5)**.

Item 9: Renumber **24.4(6)** as **24.4(3)** and amend as follows:

24.4(63) In section 6 3, entitled “Community impact,” the applicant shall include an identification and analysis of the effects the construction, operation and maintenance of the proposed facility will have on the site impact area including, but not limited to, the following:

a. A forecast of the permanent impact of the construction, operation, and maintenance of the proposed facility on commercial and industrial sectors,

housing, land values, labor market, health facilities, sewage and water, fire and public protection, recreational facilities, schools and transportation facilities.

b. A forecast of any temporary stress placed upon housing, schools or other community facilities as a result of a temporary influx of workers during the construction of the proposed facility.

c. A forecast of the impact of the proposed facility on property taxes of affected taxing jurisdictions. The forecast shall include the effects on property taxes caused by all community development proximately related to the construction of the proposed facility.

d. A forecast of the impact on agricultural production and uses.

e. A forecast of the impact on open space areas and areas of significant wildlife habitat. Such forecast shall include identification and description of the impact of the proposed facility on terrestrial and aquatic plants and animals.

f. A forecast of the impact on transportation facilities.

g. A forecast of the impact on cultural resources including known archaeological, historical and architectural properties, which are on, or eligible for, the national register of historic places.

h. A forecast of the impact on landmarks of historic, religious, archaeological, scenic, natural or other cultural significance. Such information shall include an assessment of the aesthetic impact of the proposed facility, applicant's plans to coordinate with the ~~state historical preservation office and~~ office of state archaeologist to reduce or obviate any adverse impact; and the applicant's plans

to coordinate with the state office of disaster services in the event of accidental release of contaminants from the proposed facility.

Item 10: Renumber **24.4(7)** as **24.4(4)** and amend as follows:

24.4(74) Site selection methodology. In section ~~47~~, entitled "Site selection methodology," applicant shall present information related to its selection of the proposed site for the facility. Such information shall include the following:

a. The general criteria used to select alternative sites, and how these criteria were used to select the proposed site. ~~how these criteria were measured and weighted, and reasons for selecting those criteria.~~

~~b. An identification of at least two alternative sites considered by applicant for the facility and discussion of the applicability of the site selection criteria to those sites.~~

~~c. A discussion of the applicability of the site selection criteria to the proposed site and its advantages over the other alternative sites considered by applicant.~~

~~D.b.~~ A discussion of the extent to which reliance upon eminent domain powers could be reduced by use of an alternative site, alternative generation method, or alternative waste handling method.

Item 11: Amend **24.6(2)"a" and "b"** as follows:

24.6(2) The board shall serve notice of the acceptance of the application and proceeding schedule upon the following:

a. All regulatory agencies, including Iowa department of transportation, and environmental protection division ~~and natural resource commission~~ of the department of natural resources.

b. Interested agencies as determined by the board, including the ~~Iowa geological survey~~, office of state archaeologist and the office of historical preservation of the state historical society of Iowa.

Item 12: Amend **24.7(6)** as follows:

24.7(6) Conduct of the meeting. A member of the board, or a hearing examiner designated by the board shall serve as the presiding officer at the meeting and present an agenda for such meeting which shall include a summary of the legal rights of affected legal landowners. No formal record of the meeting is required. The meeting shall ~~not~~ be considered ~~adversarial in nature, but rather shall have as its purpose the presentation by the applicant of its proposal, the furnishing of~~ as an opportunity for interested members of the public to raise questions regarding the proposal, and an opportunity for the applicant to respond.

Item 13: Delete rules **24.8, 24.8(1), and 24.8(2).**

Item 14: Renumber **24.9 to 24.8, 24.9(1) to 24.8(1), 24.9(2) to 24.8(2), 24.9(3) to 24.8(3), 24.9(4) to 24.9(4), 24.9(5) to 24.8(5)**, delete **24.9(6)**, and amend and renumber the first paragraph of **24.9(1)** as follows:

199—24.9-8(476A) Hearing procedure.

24.89(1) General. The proceedings conducted by the board pursuant to this chapter shall be treated in the same manner as a contested case pursuant to the

provisions of Iowa Code chapter 17A. Except where contrary to express provisions below, the hearing procedure shall conform to the board's rules of practice and procedure, 199—Chapter 7, IAC. The proceeding for the issuance of certificate may be consolidated with the contested case proceeding for determination of applicable ratemaking principles under Iowa Code section 476.53.

Item 15: Amend and renumber **24.10** as follows:

199—24.910(476A) Separate hearings on separate issues.

24.910(1) *By motion.* The board, upon its own motion or on the motion of the applicant, may order separate phases on particular issues of the proceeding. Each phase shall be addressed to issues involved in applying one or more of the facility siting criteria set forth in board subrule 24.104(2) and shall result in board findings with respect thereto.

24.910(2) *By agreement.* In accordance with agreements made pursuant to Iowa Code chapter 28E, with regulatory agencies, the board shall establish separate phases of the hearing process to determine whether the proposed facility will conform to the permit and licensing requirements of the regulatory agencies.

24.910(3) *Procedure.* Each such hearing phase shall be conducted in conformance with the requirements of 24.89(476A) or other rules of practice and procedure designated in the applicable chapter 28E agreement.

~~24.10(4) Criteria. In no event shall a certificate be issued unless and until the board has made appropriate findings with respect to all of the facility siting criteria set forth in board subrule 24.11(2).~~

Item 16: Amend and renumber **24.11** as follows:

199—24.101(476A) Certification decision.

24.101(1) Issuance of decision. Upon the close of the record in the proceeding, the board shall expeditiously render a written decision with complete determinations as to the facility siting criteria or portion thereof under consideration, other necessary findings of fact or conclusions of law necessary to support the board's decision.

24.101(2) Facility siting criteria. In rendering its certification decision, the board shall consider the following criteria:

a. Whether the service and operations resulting from the construction of the facility are ~~required by the present and future public convenience, use and necessity. consistent with the legislative intent and the economic development policy of the state as expressed in Title I, subtitle 5, and will not be detrimental to the provision of adequate and reliable electric service.~~ Such determination shall include: whether the existing transmission network has the capability to reliably support the proposed additional generation interconnection to the network.

~~(1) The need for power based on electrical energy demands of each participant's service area and interconnected power pool considering current and projected impacts of energy conserving programs, policies and technology;~~

~~(2) The advantages, disadvantages, and risks associated with the proposed facility as compared to the advantages, disadvantages, and risks associated with alternative methods of meeting the established electric energy demand; and~~

~~(3) Economic advantages, disadvantages, and risks to the public of the replacement of or the placing on reserve of existing generation units.)~~

b. Whether the construction, maintenance, and operation of the proposed facility will ~~cause minimum adverse~~ be consistent with reasonable land use, and environmental policies, ~~and aesthetic impact~~ and ~~are~~ consonant with reasonable utilization of air, land, and water resources, ~~for beneficial purposes~~ considering available technology and the economics of available alternatives. Such determination shall include:

(1) Whether all adverse impacts attendant the construction, maintenance and operation of the facility have been reduced to a reasonably acceptable level;

(2) Whether the proposed site represents a reasonable choice among available alternatives, ~~from a technical, social, and economic standpoint;~~ ~~(3) Whether the proposed generating plant represents a reasonable choice among available alternatives for meeting the power from a technical, social, and economic standpoint;~~

~~(34)~~ Whether the proposed facility complies with applicable city, county or airport zoning requirements, and if not, whether the location of the proposed facility at the proposed site is reasonably justified from an economic, technical, and social standpoint.

c. Whether the applicant is willing to ~~perform the services resulting from the construction of the facility and to~~ construct, maintain, and operate the facility pursuant to the provisions of the certificate and the Act.

d. Whether the proposed facility meets the permit and licensing requirements of regulatory agencies.

e. Requirement for good engineering practice.

~~(1) Whether the facility will be constructed, maintained and operated in accord with accepted good engineering practice in the electric industry to assure, as far as reasonably possible, continuity of service, and safety of persons and property.~~

~~(2)~~ The utility applicant shall use the applicable provisions in the publications listed below as standards of accepted good practice unless otherwise ordered by the board:

(a) Iowa Electrical Safety Code, as defined in IAC[199], Chapter 25.

(b) Rescinded, effective 1/12/83.

(c) National Electrical Code ~~ANSI-C1-1975-~~ as defined in IAC[199], Chapter 25.

(d) Operation and Maintenance of Turbine Generators-ANSI standard C50.30-1972.

(e) Power Piping-ANSI standard B31.1-~~1998~~1977.

~~(f) Nuclear Power Piping-ANSI standard B31.7-1969 and addendum thereto including B31.7a-1972, B31.7b-1971 and B31.7C-1971.~~

~~f. Whether each participant, if a public utility as defined in Iowa Code section 476.1, has complied with Iowa Code section 476A.6(4).~~

~~g. Whether each participant, if a public utility as defined in Iowa Code section 476.1, has demonstrated to the board that the utility has considered sources for long-term electric supply from either purchase of electricity or investment in facilities owned by other persons.~~

~~h. Whether each participant, if a public utility as defined in Iowa Code section 476.1, has complied with Iowa Code section 476A.6(5).~~

24.101(3) Amendment. If the board finds that the application and record in the proceeding does not support affirmative findings with regard to these criteria, the board will, in its order, specify any deficiencies determined to exist. The applicant shall have 30 days from the notification of the deficiencies to amend or, for good cause, to request a reasonable extension of time to amend the application or to request reopening of the record to correct the deficiencies, or both.

24.101(4) Denial. In the event the applicant fails to amend in a timely fashion, or after amendment or reopening the record, or both, the board is still unable to make an affirmative finding, the board will deny the application. Applicant may request rehearing on such denial in accordance with Iowa Code section 17A.16(2).

24.101(5) Application approval. If the board finds, after amendment or record reopening, or both, or otherwise, that affirmative findings are appropriate, the board shall approve the application and, in accordance with 24.13(476A)

prepare a certificate ~~of public convenience, use, and necessity~~ for construction of the facility.

Item 17: Amend and renumber **24.12** as follows:

199—24.1~~12~~(476A) Site preparation.

24.1~~12~~(1) In the event no certificate has been issued after 90 days from the commencement of the hearing, the board may permit applicant to begin work to prepare the site for construction of the facility. Any activities conducted pursuant to this section shall have no probative value to the board's decision concerning the actual issuance of a certificate.

24.1~~12~~(2) In the event the board denies an application for a certificate or an amendment to a certificate, applicants who have received permission to begin site preparation pursuant to 24.1~~12~~(1), shall restore the site, in accordance with the board order denying the application.

Item 18: Amend and renumber **24.13** as follows:

199—24.1~~23~~(476A) Issuance of a certificate.

24.1~~23~~(1) *General.* The certificate shall authorize construction, maintenance, and operation of the facility on the site designated in the certificate according to the following:

- a. Those terms and conditions imposed by the board and stated in the certificate.
- b. Those terms and conditions in licenses and permits issued by regulatory agencies before and during the proceeding.

c. Those terms and conditions which have been specifically recommended by regulatory agencies in the proceeding and declared by those regulatory agencies or the board as being necessary for the applicant to comply with requirements of licenses or permits then sought but not yet issued.

24.123(2) *Eminent domain.* The certificate shall give the applicant the power of eminent domain to the extent and under such conditions as the board approves, prescribes, and finds necessary for the public convenience, use, and necessity, proceeding in the manner of works of internal improvement under Iowa Code chapter 472.

24.12(3) *Certificate Transfer.* A certificate may be transferred, subject to the approval of the board, to a person who agrees to comply with the terms of the certificate including any amendments to the certificate. Certificates shall be transferable by operation of law to any receiver, trustee or similar assignee under a mortgage, deed of trust or similar instrument.

24.12(4) *Application withdrawal.* Pursuant to Iowa code section 476.53, a rate-regulated utility shall have the option of withdrawing its application for issuance of a certificate.

Item 19: Amend and renumber **24.14** as follows:

199—24.134(476A) Exemptions from certification application; application for amendment for certificate: Contents.

24.134(1) Application for amendment.

a. Each person or group of persons proposing a significant alteration to any facility, which was constructed pursuant to a certificate ~~of public convenience,~~

~~use and necessity~~ issued by the board, shall file an application for an amendment to a certificate in lieu of an application for a certificate ~~of public convenience, use, and necessity.~~

b. Each person or group of persons proposing a significant alteration to any facility which was not constructed pursuant to a certificate ~~of public convenience, use, and necessity~~ issued by the board, must file an application for such certificate unless:

(1) The facility has not attained full commercial rating and has not operated in excess of 80 percent of its maximum nameplate megawatt rating for ten hours daily for 45 consecutive days; and

(2) The significant alteration requires no more land than was required for the facility, is within the scope of publicly announced plans for the facility's construction, and entails no additional contracts for major components than those let for the facility.

24.134(2) All applications for amendment to a certificate shall be filed in accordance with 24.3(476A) and shall include:

a. A complete identification and discussion of the nature of the amendment proposed; and

b. A complete enumeration of the effects the amendment has on the accuracy of the information contained in the application for a certificate ~~of public convenience, use and necessity~~ filed pursuant to 24.4(476A).

24.134(3) Upon board acceptance of the application in accordance with 24.134(1), the board shall establish a hearing schedule. At the board's

discretion, the informational meeting and prehearing conference for this proceeding may be waived. Notice shall be in accordance with 24.6(2).

24.134(4) In the consideration of an application for a certificate, pursuant to 24.134(1)“b,” or amendment to a certificate, pursuant to 24.14(1)“a,” ~~for an addition of less than 100 megawatts in the maximum generator nameplate capacity of the facility,~~ there shall be a rebuttable presumption that the decision criteria of 24.104(2) are satisfied.

24.134(5) Amendment to a certificate. In determining whether an amendment to a certificate will be issued to the applicant, the board will be guided by the criteria set forth in 24.104(2) to the extent applicable and appropriate.

This rule is intended to implement Iowa Code sections 17A.3, 474.5, 476.1, and 476.2.

Item 20: Renumber **24.15 to 24.14.**

Item 21: Amend and renumber **24.16** as follows:

199—24.156(476A) Waiver. The board, if it determines that the public interest would not be adversely affected, may waive any of the requirements of this chapter. ~~for facilities with a maximum nameplate generating capacity of 100 megawatts or less.~~ In determining whether the public interest would not be adversely affected, the board will consider the following factors:

1. The purpose of the facility.
2. The type of facility.

3. If the facility is for the applicant's own needs, ~~whether there are plans to sell excess capacity and, if so, to whom.~~

~~4. If the applicant is other than a utility, the effect of the facility on any utility currently serving the applicant.~~

~~5. If the applicant is other than a utility, the effect of the facility on the customers of the utilities serving the applicant.~~

46. The effect of the facility on existing transmission systems.

57. Any other relevant factors.

This rule is intended to implement Iowa Code sections 476A.1, 476A.2, 476A.6, and 476A.15.

August 3, 2001

/s/ Allan T. Thoms

Allan T. Thoms
Chairperson